

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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MARK KAPITI,

Plaintiff,

- against -

Docket No.: 07 Civ. 3782  
(RMB) (KNF)

**Hon. Kevin N. Fox (M.J.)**

RAYMOND W. KELLY, in his official capacity  
as Commissioner of the New York City Police  
Department, PROPERTY CLERK, New York  
City Police Department, and The CITY OF NEW  
YORK,

Defendants.  
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**DECLARATION**

STEVEN L. KESSLER declares under penalty of perjury:

1. I represent plaintiff Mark Kapiti in the referenced civil rights action brought pursuant to 42 U.S.C. § 1983. I make this Declaration, based upon my review of the file, discussions with my client and participation in the proceedings herein, in opposition to defendants' motion to compel plaintiff to execute a release unsealing criminal records.

2. Attached as Exhibit "A" is a copy of the criminal court information relating to the charges filed against plaintiff in connection with the seizure of his vehicle.

3. Attached as Exhibit "B" is a copy of the Property Clerk's Motor Vehicle/Boat Invoice for the impoundment of plaintiff's vehicle.

4. Attached as Exhibit “C” is a copy of a Petition and Notice of Hearing confirming the seizure of plaintiff’s vehicle, the invoicing of the seizure by the Property Clerk, and defendants’ receipt of plaintiff’s request for a retention hearing.

5. Attached as Exhibit “D” is a copy of a Release and Hold Harmless Agreement, executed by Honda Financial on May 30, 2006 – five days before Mr. Kapiti’s scheduled *Krimstock* hearing.

6. Attached as Exhibit “E” is a copy of a computer printout produced by defendants, entitled “CEU Voucher Tracking System”.

7. Attached as Exhibit “F” are copies of correspondence from plaintiff’s prior counsel to Honda Financial Services and/or its counsel.

8. Attached as Exhibit “G” is a copy of the Certificate of Disposition acquitting Mr. Kapiti of the criminal charges after a trial on the merits.

**WHEREFORE**, the undersigned respectfully requests that this Court deny defendants’ motion in its entirety, with costs and fees pursuant to 42 U.S.C. § 1988.

Dated: New York, New York  
January 24, 2008

Steven L. Kessler  
STEVEN L. KESSLER (SK-0426)